

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	1583.00
COMPLAINT INVESTIGATOR:	Steve Starbuck
DATE OF COMPLAINT:	June 12, 2000
DATE OF REPORT:	July 7, 2000
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	December 18, 2000

COMPLAINT ISSUES:

Whether the Vigo County School Corporation and the Covered Bridge Special Education Cooperative violated:

511 IAC 7-12-1(e)(1) with regard to the school's alleged failure to include in the case conference committee (CCC) a public agency representative with the authority to commit the public agency's resources.

34 CFR 300.344(a)(2) with regard to the school's alleged failure to include in the CCC at least one regular education teacher.

511 IAC 7-12-1(j)(5) and (k) with regard to the school's alleged refusal to utilize the CCC to determine the student's need for a paraprofessional as one of the related services.

511 IAC 7-12-1(k)(4) and 511 IAC 7-13-5(v) with regard to the school's alleged failure to indicate in the student's individualized education program (IEP) the specialized transportation equipment and assistance the CCC agreed the student would receive.

511 IAC 7-12-1(l) with regard to the school's alleged failure to keep in the record of each student receiving special education or related services an IEP that is no more than twelve months old.

511 IAC 7-12-1 with regard to the school's alleged failure to include the student in general education classes for the 1999-2000 school year as specified in the IEP dated March 19, 1999.

During the course of the investigation, an additional issue was identified, which is:

511 IAC 7-12-1(k)(4) with regard to the school's alleged failure to specify in the IEP the length and frequency of special education services.

FINDINGS OF FACT:

1. The student is eleven years old and will be attending the fifth grade this fall. The student has been determined eligible for special education due to a multiple handicap, a communication disorder, and a visual impairment.
2. During the last four CCC meetings convened for the student, the building principal served as the case conference coordinator for three of the meetings. The district supervisor for the special education planning district served as the case conference coordinator at the other CCC meeting.

According to the director and based on the planning district's procedural manual, both of these individuals have the authority to commit public agency resources when serving as a case conference coordinator at CCC meetings.

3. IEPs were written for the student on March 19, 1999, May 21, 1999, May 12, 2000, and June 1, 2000. The IEPs written on May 21, 1999, and June 1, 2000, were written specifically to address the student's need for an extended school year and did not discuss the student's involvement with a general education program. The IEPs written on March 19, 1999, and May 12, 2000, state the student will participate in a general education classroom 15 to 30 minutes a day as appropriate. A general education teacher did not attend any of the four CCC meetings mentioned above.
4. CCC meeting notes as recorded by the building principal on May 12, 2000, indicate the parent provided the CCC with a list of situations where the student requires assistance during the instructional day. At this meeting the parent requested that the student be assigned a one-to-one assistant. In addition, the parent requested the assistant be listed on the IEP as a related service. According to the CCC meeting notes, the district supervisor of the special education planning district said the school would provide staffing to implement the student's IEP. CCC meeting notes do not reflect that consensus was reached concerning the student's need for a one-to-one assistant or that the issue was adequately discussed to address the parent's concerns regarding the service and the recording of the service on the IEP. In addition, the CCC notes reference that the parent needed to put her request for a one-to-one assistant in writing. In the parent's letter of complaint to the Division, the parent states she was told by the district supervisor of the special education planning district that she would have to put in writing to the director her request for a one-to-one assistant. The parent later requested mediation to assist in resolving the issue of providing the student with a one-to-one assistant. Mediation has been completed, and the school and parent have agreed on a plan to address the issue of providing the student with a one-to-one assistant.
5. At the CCC meeting convened on May 12, 2000, the parent requested that there be someone on the bus to assist the student. The CCC agreed this could be provided once the Special Needs Transportation form was completed. The form was completed on May 17, 2000, and indicates the student requires adult assistance on the bus. The IEP dated May 12, 2000, notes the student requires transportation daily and a tumble form seat for the bus. The IEP does not specify that the student requires adult assistance on the bus. Whether or not the school would provide specialized transportation as a related service as specified in 511 IAC 7-13-5(v) was not an issue of dispute.
6. The student's annual case review conference was convened on March 19, 1999, at which time an IEP for the 1999-2000 school year was written. The next annual case review conference was convened on May 12, 2000, at which time the student's IEP was written for the 2000-2001 school year.
7. The IEP written on March 19, 1999, for the 1999-2000 school year states the student will participate in a general education program for 15 to 30 minutes a day as appropriate. The parent alleges the student was capable of participating in general education programming more frequently than occurred. The director's secretary states the director attempted to contact two of the student's teachers to determine how frequently the student participated in the general education program. According to the director's secretary, these two teachers did not get back with the director. On July 6, 2000, the director submitted a statement which states, "based on information from staff, (the student) was in the regular classroom 50 percent of the time." The director states the time the student did not participate in the regular classroom was due to disruptive behavior. On June 28, 2000, the director was asked to provide the Division with attendance records to document the student's participation in general education programming. The director stated attendance records may not have been kept by the teachers, and none were provided to the Division.

8. The IEP dated May 12, 2000, states the student will participate in a general education classroom 15 to 30 minutes per day as appropriate. The term "as appropriate" is not defined in the IEP. The IEP also states the student will receive occupational therapy services 1 time per week for 20 to 30 minutes.

CONCLUSIONS:

1. Finding of Fact #2 indicates the school provided an agency representative with the authority to commit public agency resources at the student's last four CCC meetings. Therefore, no violation of 511 IAC 7-12-1(e)(1) is found.
2. Finding of Fact #3 reflects the school failed to have a general education teacher as a participant at the student's last four CCC meetings. Therefore, a violation of 34 CFR 300.344(a)(2) is found.
3. Finding of Fact #4 indicates the school failed to utilize the CCC to determine the student's need for a paraprofessional as one of the related services. Therefore, a violation of 511 IAC 7-12-1(j)(5) and (k) is found.
4. Finding of Fact #5 reflects that although the school agreed to provide specialized transportation to the student, the type of service, i.e., adult assistance on the bus, was not specified in the student's IEP dated May 12, 2000. Therefore, a violation of 511 IAC 7-13-5(v) is not found, however, a violation of 511 IAC 7-12-1(k)(4) is found.
5. Finding of Fact #6 indicates the school failed to keep in the record of each student receiving special education or related services an IEP that is no more than twelve months old. Therefore, a violation of 511 IAC 7-12-1(l) is found.
6. Finding of Fact #7 reflects the school failed to document that the student was included in general education classes for the 1999-2000 school year as specified in the IEP dated March 19, 1999. Therefore, a violation of 511 IAC 7-12-1 is found.
7. Finding of Fact #8 indicates that both the length and frequency of special education services are given in a range without a means for determination of the amount of needed service or documentation that the student requires services to be delivered in such a manner. Therefore, a violation of 511 IAC 7-12-1(k)(4) is found.

The Department of Education, Division of Special Education, requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Vigo County School Corporation and the Covered Bridge Special Education Cooperative shall:

1. In-service all appropriate personnel as to the requirements as specified in 511 IAC 7-27-3(a)(3), 511 IAC 7-27-4, 511 IAC 7-27-6(a)(5), 511 IAC 7-27-7(d), and 511 IAC 7-27-8(a).

The in-service training for 511 IAC 7-27-6(a)(5) shall include reference to the memorandum dated February 10, 2000, to special education directors from the state director of special education regarding the recording of length and frequency of services in IEPs. Submit documentation to the Division that all in-service training has been completed no later than September 22, 2000. The documentation should include a list or an agenda of all issues discussed, any handouts that were

distributed, and a list of attendees by name and title.

2. Convene a CCC meeting to correct the wording in the IEP dated May 12, 2000, concerning the term "as appropriate," and the services involving the general education classroom and occupational therapy. The length and frequency should not be listed as a "range" or listed "as appropriate" unless the CCC determines the student has unique needs that require services to be delivered in such a manner. Should this determination be made, the revised IEP will need to reflect this reason and how the amount of services will be determined. In addition, the revised IEP will need to include a listing of all transportation services to be provided to the student. Submit the revised IEP and CCC Summary Report to the Division no later than September 22, 2000.
3. Submit a letter of assurance to the Division no later than August 4, 2000, stating that the school corporation will provide a general education teacher at all future CCC meetings, if the student is or may be participating in the general education environment.

DATE REPORT COMPLETED: July 7, 2000